IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6957 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K K CHATURVEDI RETD.DGM (A)

Versus

UNION OF INDIA DIRECTOR GENERAL OFFICE OF DG

Appearance:

1. Special Civil Application No. 6957 of 2001
MR MS TRIVEDI for Petitioner No. 1
MS PAURAMI B SHETH for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 17/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The petitioner, in this petition, under Article 227 of the Constitution of India, has challenged the judgment rendered by the Central Administrative Tribunal in O.A. No. 133 of 2000, dated 16.7.2001 wherein the said application came to be rejected by the Tribunal.

2. The petitioner is a retired Deputy General Manager (DGM) of the respondents who had completed 13 years of service in Junior Administrative Grade (JAG) in 1997. Pursuant to the circular dated 9.2.1998, at Annexure.A to the petition, he was given the benefit of revised pay scale of Rs.14300-400-18300. The said benefit continued till the date of his retirement, i.e. upto 1.12.1999. According to the petitioner, he is entitled to get the benefit on the basis of average of last ten months' salary. However, the retirement dues are paid on the basis of the pay scale which was given to him prior to 1997. The petitioner challenged the said decision by approaching the Central Administrative Tribunal, Ahmedabad Bench. It appears that, before the Tribunal, the respondents submitted that the clarification received from the Department of Telecom, vide letter dated 26.4.2001 clarifying that the upgraded scale of Rs.14300-18300 is not admissible to those Grade-A officer who retired before 6th June 2000. The Tribunal accepting the said statement observed that the fixation of pension and retirement dues made by the respondents is as per rules and therefore, the O.A. was devoid of any merits and accordingly, the same was rejected.

3. Learned Counsel for the respondents produced us the communication dated 26.4.2001 of the Ministry of Communications, Department of Telecommunications, New Delhi. Item No.3 with which we are concerned for which the clarification is sought for by the Department, reads, "upgradation of the pay scale of Rs.14300-400-18300 is admissible to the retired Group-A officers" to which the clarification is given by the Ministry of Finance stating that "the upgradation of scale of Rs.14300-18300 shall not be admissible to those Group-A officers who retired before 6th June 2000".

4. It is true that as per the communication dated 9.2.1998, at Annexure.A, the revised pay scale of Rs.14300-400-18300 was given to all the JAG officers belonging to Group-A Engineering service in the Department of Telecom who have completed in all a total

service of 13 years in Group-A with effect from 1.1.1996 irrespective of their designation in JAG. However, the said benefit was provisionally fixed up till further orders and the said pay fixation is subject to revision depending on the clarification sought for from the DOP&T regarding computation of 13 years, requirement of DPC etc., which is clarified by above communication. We, however, fail to understand as to how the DOP&T has clarified and on what basis and how the upgraded scale of Rs.14300-18300 is not admissible to those Group-A officers who retired before 6th June 2000. These are the possible questions crop up while deciding the case on hand. In absence of any material or any justifiable reasons from DOP&T, it is not possible for us to straightway accept the clarification given in the matter. The Tribunal, in our opinion, could have insisted for appropriate clarification from the DOP&T before accepting the communication dated 26.4.2001. We are, therefore, of the opinion that this matter requires re-consideration and a fresh decision is inevitable.

5. In the result, this petition is allowed. The order dated 16.7.2001 passed by the Central Administrative Tribunal, Ahmedabad Bench in O.A. No.133 of 2000 is quashed and set aside. The matter is remanded back to the Tribunal for the purpose of deciding the matter afresh. It will be open for the petitioner to seek appropriate relief by challenging the Circular dated 26.4.2001 by impleading the concerned Department as party respondent. Rule is made absolute accordingly. There shall be no order as to costs.

(Kshitij R. Vyas, J.)

(Sharad D. Dave, J.)

Sreeram.